STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 26, 2022

IN THE MATTER OF:
Appeal Board No. 623141

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective October 31, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, disqualifying the claimant from receiving benefits, effective October 31, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 31, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by and on behalf of the claimant. By decision filed April 14, 2022 (), the Administrative Law Judge overruled the initial determination of misconduct and sustained the initial determination of voluntary separation from employment without good cause.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of voluntary separation from employment without good cause.

.
Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a health care facility, as a

phlebotomist for over five years. Her job duties included registering patients, performing blood draws, and processing samples for testing. In September 2021, the claimant was taking Plaquenil for a medical issue.

In September 2021, the employer notified all employees that as of October 2021, the company would require all patient-facing employees entering the office and/or laboratories to be fully vaccinated. This requirement was made pursuant to an emergency regulation issued by the Public Health and Health Planning Council and authorized under Title 10 of the New York State Public Health Law. The claimant's work as a phlebotomist required direct patient contact and her job could not be done through telecommuting. On September 25, 2021, the claimant requested a religious exemption based upon her Christian belief that foreign substances would corrupt her blood.

On October 30, 2021, the employer notified the claimant that her religious exemption was denied and that she was being placed on paid administrative leave as of November 6, 2021. The claimant has not returned to work.

OPINION: The credible evidence establishes that the claimant's employment ended on October 31, 2021, because she refused to receive the COVID-19 vaccine, a condition of her continued employment. We note that the claimant was aware of this requirement and its applicability to her employment as a healthcare worker and that she could not continue her employment without compliance. If the claimant had been vaccinated, as required, she could have continued in her employment.

A provoked discharge occurs when a claimant voluntarily violates a legitimate, known obligation, leaving the employer no choice but discharge. A provoked discharge is considered a voluntary leaving of employment without good cause and constitutes a disqualification from the receipt of benefits. (See Matter of DeGrego, 39 NY2d 180 [3d Dept.1976]). In the case herein, the obligation in question was compliance with the employer's vaccine requirement. The requirement was put in place to abide by New York State's mandate that all healthcare workers be vaccinated against COVID-19 during the worldwide pandemic. We note that the Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease. (See Matter of Garcia v. New York City Dept. of Health & Mental Hygiene, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; Matter of C.F. v. New York City Dept of Health & Mental Hygiene, 191 AD3d 52

[2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and Matter of New York City Mun. Labor Comm. v. City of New York, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82 v. Cuomo, 64 NY2d 233, 237-40 [1984]).

In this matter, the obligation in question was compliance with the employer's vaccine requirement. It is significant that this requirement was established for the purpose of complying with the State of New York's mandate that all healthcare workers be vaccinated against COVID-19 during the worldwide pandemic. Because of the severity of the ongoing COVID-19 crisis and healthcare providers' need to protect the health of employees and patients, we find that the emergency regulation, requiring all healthcare workers to be vaccinated against COVID-19, was justified by a compelling governmental interest. We therefore find that the employer's requirement that the claimant be vaccinated was a legitimate, known obligation and that the employer had no choice but to end the claimant's employment when she declined the vaccination.

We now turn to the claimant's contention that her refusal was due to religious concerns for which she sought, and was denied, an exemption. We note that the Supreme Court of the United States has held that "an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." (See Employment Div. v. Smith, 494 US 872, 879 [1990]). The Court determined that, so long as the law is neutral and not aimed at a specific religion, generally applicable, and pertaining to an area of law that the government can regulate, it cannot be preempted by a religious practice. In the matter now before us, there is no allegation that the state cannot regulate the healthcare industry, that the law is not generally applicable to those in that industry, or that it targets a specific religion.

Further, in Dr. A. et al v. Hochul, 142 S.Ct. 552 (2021), the Court denied an application for injunctive relief in a challenge to New York State's law removing religious exemptions from its COVID-19 vaccine mandate for hospital

workers. Additionally, the Second Circuit in We the Patriots USA, Inc. v. Hochul 2021 U.S. App. LEXIS 32921 (2d Cir 2021), upheld New York's COVID-19 vaccine mandate for hospital employees without religious exemptions. Although the claimant's representative cites Biden v. Missouri, 142 S. Ct. 647 (2022), to suggest a different result, we are not persuaded by his argument. We note that in Biden v. Missouri, 142 S. Ct. 647 (2022) the Supreme Court of the United States has upheld the vaccine requirement for healthcare workers in healthcare facilities receiving Medicare/Medicaid funds.

Under these circumstances, we find that the claimant's personal beliefs do not outweigh the employer's interest in protecting the health and safety of its employees and patients. The claimant therefore has not substantiated that she had good cause for ending continuing employment. Accordingly, we conclude that the claimant separated from her employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 31, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER